

Memorandum

Date: January 30, 2009
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To: Vice Chairman James D. Boyd, Presiding Member
Commissioner Karen Douglas, Associate Member
Paul Kramer, Hearing Officer

From: California Energy Commission – Mike Monasmith
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Subject: **CARLSBAD ENERGY CENTER PROJECT (07-AFC-6) STATUS REPORT 4**

Pursuant to the Revised Committee Scheduling Order dated December 26, 2008, staff issues Status Report #4 for the proposed Carlsbad Energy Center Project (CECP) Application for Certification (AFC).

Milestones Since Status Report #3, filed December 3, 2008

Staff's initial work on the discovery and analysis phase for the proposed CECP culminated with the filing of the Preliminary Staff Assessment (PSA) on December 11, 2008. Previous status reports detailed the relatively long discovery process and resulting schedule delays that preceded the PSA release. On January 7-8, 2009, staff held a public workshop in Carlsbad to discuss the PSA. There was a high degree of participation in the PSA Workshop. There were several hundred members of the public who attended various workshop sessions over the course of two days. The workshop was also well attended by official parties to the proceeding (including the city of Carlsbad and three other intervenors). Agency participation included the San Diego Air Pollution Control District, North County Transit District, San Diego Regional Water Quality Control Board, Federal Aviation Administration, and the California Department of Transportation.

Status of Outstanding Information by Technical Area

The PSA Workshop resulted in healthy discussions on a number of technical areas. The workshop also provided staff with a better sense of issues important to local Carlsbad residents and intervenors (including the city of Carlsbad). Importantly, the workshop provided staff the opportunity to determine where more analysis and discovery was warranted and needed. Additionally, a number of filings and motions for this proceeding have occurred in the time since the PSA's release. The following summary provides the Committee a snapshot status of outstanding information and issues, by technical area, as staff works towards its Final Staff Assessment (FSA), currently scheduled for release in late March, 2009. Staff will hold an FSA Workshop, which may be followed by an addendum to the FSA document, comprising staff's final testimony prior to the commencement of Evidentiary Hearings.

AIR QUALITY

The San Diego Air Pollution Control District (District) released their Preliminary Determination of Compliance (PDOC) on November 25, 2008. The applicant has requested the use of the net emission reduction credits from the permanent closure of Encina Power Station (EPS) Units 1-3. The PDOC would require the applicant to offset their net increase in Nitrogen Oxide (NOx) emissions. In addition to the District's required NOx offset mitigation, staff recommended in the PSA that the applicant provide a small amount of emission reduction credits, either from the District offset bank or by funding the creation of new emissions reductions, for particulate matter, volatile organic compounds (VOCs), and sulfur oxides (SOx) to fully mitigate the project's net permitted increase in nonattainment pollutants and their precursors. Applicant's PDOC comment letter filed on January 5, 2009 raised new issues for staff which were discussed during the heavily-attended evening PSA workshop session on January 7, 2009.

Status / Response

Staff filed Data Request Set 4 on January 22, 2009. The data requests focused exclusively on air quality questions resulting from applicant's January 5, 2009 PDOC comment letter. Responses are expected by mid-February, 2009, and will be reflected in the Air Quality section of the FSA.

Intervenor Center for Biological Diversity (CBD) filed their first set of data requests on September 26, 2008. The applicant responded on October 14, 2008 with an objection letter that outlined a number of reasons (including timeliness, relevance and standing) as justification for not providing corresponding data responses. Accordingly, these Greenhouse Gas (GHG)-based questions became the impetus for several motions and ultimately a Committee hearing (on December 15, 2008). As a result of this hearing and per the Committee's request, the applicant responded to CBD's questions on January 26, 2009. Parties also discussed GHG issues and what level of staff analysis should be deemed appropriate during the PSA Workshop evening session on January 7, 2009.

Status / Response

Staff continues to analyze applicant's data responses and will incorporate new information, where appropriate, into the FSA.

BIOLOGY

In the PSA, staff was undetermined on Laws, Ordinances, Regulations, and Standards (LORS) compliance in relation to CECP's biological resource impacts. Specifically, impingement and entrainment impacts from the CECP's ocean desalination system were undetermined due to a lack of collaboration and review by resource agencies, including the U.S. Fish & Wildlife Service (USFWS).

Status / Response

Staff has discussed CECP biological resource impacts with the California Department of Fish and Game, the USFWS, and National Marine Fisheries Service, which will be reflected in the FSA.

LAND USE

Land use consistency and conformance were discussed during the PSA Workshop, particularly as they relate to the city of Carlsbad, the California Coastal Commission and the Coastal Act. Staff determined the CECP was in compliance with all LORS, as it would be appropriately located on land designated and zoned by the city for industrial use

purposes, including power generation. Repeated attempts were made by intervenors imploring Coastal Commission staff to conduct its own Coastal Act consistency study because of CECP's location within the Coastal Zone. However, the Coastal Commission denied these requests. The CECP would eliminate over 220 million gallons per day (mgd) of once-through ocean water cooling – a stated goal of the Coastal Commission.

Status / Response

Staff conducted a Coastal Act consistency finding in the absence of specific Coastal Commission action.

SOIL / WATER

The CECP would eliminate the need for over 220 mgd of once-through ocean water cooling currently used by Encina Power Station (EPS) Units 1-3. The CECP would be air-cooled, but still require over 700,000 gallons of water per day for industrial purposes. A Title 22 reclaimed water-supply was initially proposed in the AFC as CECP's water source. However, when adequate long-term supply for reclaimed became undetermined, the applicant amended its AFC (in July, 2008) to include an ocean water purification (desalination) component. This desalination system would utilize over 4 mgd of ocean water to generate the 700,000 gallons of water needed for CECP's industrial operations. The 4 mgd of ocean water would be conveyed to the CECP from EPS' once-through ocean water cooling system outflow, also the source of ocean water for the city's adjacent Poseidon desalination facility – future source of 50 mgd of freshwater for Carlsbad and its residents.

Status / Response

EPS Units 4-5 are not part of the CECP proposal, are relatively modern (commissioned in 1978), scheduled for continued use in the foreseeable future, and utilize ocean water for once-through cooling. Applicant has applied for appropriate permits to use EPS outflow as their water source. Specifically, applicant has applied for a discharge permit from the San Diego Regional Water Quality Control Board, and a lease from the State Lands Commission (the EPS' once-through cooling system is partially sited on state owned rock jetty, necessitating a lease). FSA will detail this and all outside agency permits required for CECP construction and/or operation, as needed.

Staff's PSA-identified back-up water source (potable water from the city) needs further analysis regarding necessity and practicality. Moreover, while Title 22/reclaimed water is not currently available from the city-owned Encina Waste Water Authority, staff will consider the appropriateness of the applicant's request not to preclude the possible use of reclaimed until the time at which final design and construction of the CECP is reached.

VISUAL RESOURCES

Of the nineteen (19) separate areas of technical analyses contained within the PSA, visual resources was the only section where staff identified a possible significant cumulative impact. Staff found this potential cumulative impact because of the possible future widening of Interstate 5 (I-5), adjacent to the CECP site. The lead agency for the I-5 widening project, Caltrans, is currently working towards the release of their DRAFT EIR/EIS document, which would contain their preferred alignment/widening alternative. The release of this document by Caltrans has been postponed numerous times, with a still

unknown final release date. Staff has received two Caltrans comment letters for the CECP, the second of which (filed on November 17, 2008) specifically addressed the CECP in terms of the I-5 widening. While not specific, the letter did indicate Caltrans' contention that all I-5 widening project alternatives would result in the removal of the earthen berm and associated landscaping that currently provides screening from passing motorists and residents who reside north and east of the proposed facility. The November 17, 2008 Caltrans letter also indicated that any visual impacts resulting from Caltrans' removal of existing screening (CECP would not alter, only augment, existing screening) would be addressed in their Draft EIR/EIS and appropriate mitigation would be identified.

Status / Response

Staff will continue to collaborate and communicate with Caltrans staff to consider cumulative visual impacts of the CECP and I-5 widening, and suggest proportionate and appropriate mitigation measures accordingly.

Staff did not speculate in its PSA regarding visual simulations of the proposed CECP and a widened I-5. However, despite the lack of specific information and a stated I-5 alignment alternative, visual simulations were made by the city, which staff believes are erroneous.

Status / Response

Caltrans is reviewing the Carlsbad PSA and will be submitting their comments in early February, 2009. While it is unlikely that Caltrans will submit simulations of their project's visual impact, it is likely that more specificity on the I-5 widening will be contained in their comment letter, which will be reflected in the FSA.

WORKER SAFETY, PUBLIC HEALTH & HAZARDOUS MATERIALS MANAGEMENT

Commission staff used various risk management goals and analysis relating to worker exposure to airborne toxins and soil contaminants, public exposure to toxins and fugitive dust containing contaminants, public exposure to accidental release of hazardous materials from on-site storage tanks, and public exposure to accidental release of hazardous materials from transportation accidents. Staff also included and referred to other agency risk management levels concerning exposure to airborne toxins and contaminate soils in its PSA analyses.

Status / Response

Staff will more fully analyze and explain why any risk(s) to worker safety or local residents as a result of the CECP is less than significant. This determination will be based upon a scientifically-measured risk safety analysis that includes all variables and potentials. Staff will also recommend conditions of certification to protect public health, minimize hazardous materials risks, and enhance worker safety and fire protection.

Next Steps

In staff's Notice of Availability of the PSA, it was requested that PSA comments be submitted by January 30, 2009. The applicant, intervenors and agencies have indicated that they will be filing PSA comments by this date. As mentioned earlier, Caltrans will be submitting their comments in February, and submitted a letter in this regard on January 28, 2009. Staff is diligently working towards resolving issues and making appropriate determinations on LORS compliance and associated mitigation and conditions of certification for inclusion in the FSA.

cc : Docket (07-AFC-6),
Proof of Service List